Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent	)	MB Docket No. 10-71
	)	
	)	

REPLY OF GRAY TELEVISION, INC.

Gray Television, Inc. ("Gray"), by its attorneys, submits this brief Reply to address the suggestion that cable systems need special "remedies" to negotiate retransmission consent agreements with television stations that control more than one program service affiliated with a "Top-4" broadcast network (*i.e.* ABC, CBS, FOX, and NBC) in the same market.[1]

The American Cable Association ("ACA") complains that broadcasters can "circumvent th[e] general prohibition" against common ownership of top-4 rated stations in a single market to the detriment of small cable operators (and ultimately their subscribers) by forcing them to pay higher prices for retransmission consent.[2] The ACA then lists 93 instances in which a single

1 Comments submitted in this proceeding overwhelmingly rebut claims that multichannel video programming distributors ("MVPDs") need the intervention of the federal government to enable them to negotiate fair deals for programming they resell for substantial profit to subscribers. The record demonstrates that the existing market-oriented retransmission consent regime benefits the viewing public by incenting broadcasters and MVPDs to enter into mutually beneficial agreements for the distribution of broadcast signals.

2 *See* Comments of American Cable Association, MB Docket No. 10-71 (May 18, 2010), at 3, 9, 11.

entity allegedly owns or controls more than one Top-4 network affiliated service in the same market, five of which are provided by Gray.[3]

In Gray's experience, ACA's allegation is incorrect in two fundamental respects. First, broadcasting more than one Top-4 network service in a market, as Gray does in full compliance with the Commission's rules, provides enormous benefits to viewers, especially in the nation's smallest markets. As noted in its initial comments in this proceeding, Gray operates 36 mostly small-market television stations, which multicast a total of 39 secondary program streams, including several Top-4 affiliated network services. Through substantial investments in digital technology and programming, Gray has launched locally-based, highly-popular network services in areas where they did not previously exist in the same form. Critically, these new locally-originated Top-4 network services are now available to anyone with an over-the-air antenna, *for free*, in some of the nation's smallest television markets: Sherman, TX-Ada, OK (161st DMA), Harrisonburg, VA (178th DMA), Bowling Green, KY (182nd DMA), and Parkersburg, WV (194th DMA). In Charlottesville, VA (183rd DMA), Gray constructed from the ground up new lower power television stations to provide over-the-air services affiliated with the ABC and FOX television networks.[4] Of course, viewers do not have to pay cable operators a cent to view these desirable national networks.

Moreover, without multicasting, viewers in these markets would have no over-the-air option to receive programming from all major networks for the simple reason that not enough full-power stations exist to broadcast them. Only two full-power commercial stations are licensed to operate in three of the markets where Gray broadcasts more than one Top-4 network

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3 *Id.*, Appendix C.

4 These station's complement Gray's WCAV(TV) (CBS), Charlottesville, Virginia.

service (Sherman-Ada, Bowling Green, and Charlottesville), and in two markets, Gray owns the *only* licensed full-power commercial station (Harrisonburg, and Parkersburg).

Second, contrary to ACA's unsubstantiated rhetoric,[5] broadcasting more than one Big 4 network services in the same market does not enable Gray to "cream[]" small cable operators. Gray compared the terms of its retransmission consent agreements in markets where it broadcasts more than one Top-4 affiliated network service with agreements in markets where it broadcasts only one major network program. On average, Gray receives no more consideration for retransmission consent per network service in markets where Gray multicasts a Top-4 network than in markets where Gray operates a single Top-4 service. In many cases, stations that multicast Top-4 network programming receive substantially *less* consideration per network service than many of Gray's single Top-4 affiliated stations.

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5 ACA at iii ("All available evidence suggests that joint control or ownership of multiple Big 4 affiliates in a single DMA results in significantly higher retransmission consent fees...."). Even ACA's economist cautions that the "available evidence" consists of "only one data point." *Id.*, Appendix B at 12.

In short, by multicasting additional Top-4 network services in small markets for free, over-the-air viewing, Gray provides substantial benefits to the public without any of the economic burdens alleged by the ACA.[6] Thus, the allegation that ownership of more than one Top-4 affiliated network service in a market is a "problem" requiring a "remedy" with respect to negotiating retransmission consent agreements should be rejected.

Respectfully submitted,

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[6] On its face, the "remedy" proposed by ACA – compel a single broadcast licensee to "assign different teams" to negotiate each network program stream , then prohibit them from communicating with each other – appears as unworkable as it is unnecessary.